In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1403

STANLEY AIR TOOLS, A DIVISION OF THE STANLEY WORKS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

This case presents the same basic question involved in *National Labor Relations Board* v. *American Cable Systems, Inc.*, No. 737, this Term, certiorari denied, December 14, 1970, and in *American Art Industries, Inc.* v. *National Labor Relations Board*, No. 995, this Term, certiorari denied, February 22, 1971. The issue is whether the Board may properly disregard the effect of post-election employee turnover in determining whether an employer's pre-election unfair labor practices preclude the holding of a fair representation election and warrant a bargaining order. In *American Cable*, one panel of the Fifth Circuit answered this question negatively (427 F. 2d 446); in *American Art*, another panel of that court answered it affirmatively (75 LRRM 2352), as did the Sixth Circuit here. See

also *G.P.D., Inc.* v. *National Labor Relations Board,* 430 F. 2d 963 (C.A. 6), certiorari denied March 22, 1971, No. 1169, this Term.

The Board believes that the court of appeals correctly decided this case in conformity with the principles enunciated in *National Labor Relations Board* v. *Gissel Packing Co.,* 395 U.S. 575, 610–611. Although the decision below is at odds with the Fifth Circuit's ruling in *American Cable,* that conflict was brought to the Court's attention in the *American Cable* petition (see Petition for the National Labor Relations Board, No. 737, this Term, pp. 9, 13).[1] Presumably the same considerations which led the Court to deny the petition in *American Cable,* as well as the subsequent petition in *American Art,* would also prompt it to deny the petition here. See also *National Labor Relations Board* v. *Clark's Gamble Corp.,* No. 265, this Term, certiorari denied, October 19, 1970. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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ARNOLD ORDMAN,
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MARCH 1971.

[1] Contrary to petitioner's assertion (Pet. 3, 15), *National Labor Relations Board* v. *General Stencils, Inc.,* 76 LRRM 2288 (C.A. 2), does not raise the same issue. The remand in that case was necessitated by the fact that the court had declined to enforce certain of the Board's unfair labor practice findings, and not because of the turnover question.

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